

## Article 7.

### Miscellaneous Provisions.

#### **§ 136-90. Obstructing highways and roads misdemeanor.**

If any person shall willfully alter, change or obstruct any highway, cartway, mill road or road leading to and from any church or other place of public worship, whether the right-of-way thereto be secured in the manner provided for by law or by purchase, donation or otherwise, such person shall be guilty of a Class 1 misdemeanor. If any person shall hinder or in any manner interfere with the making of any road or cartway laid off according to law, he shall be guilty of a Class 1 misdemeanor. (1872-3, c. 189, s. 6; 1883, c. 383; Code, s. 2065; Rev., s. 3784; C.S., s. 3789; 1993, c. 539, s. 989; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 136-91. Placing glass, etc., or injurious obstructions in road.**

(a) No person shall throw, place, or deposit any glass or other sharp or cutting substance or any injurious obstruction in or upon any highway or public vehicular area.

(b) As used in this section:

(1) "Highway" shall be defined as it is in G.S. 20-4.01; and

(2) "Public vehicular area" shall be defined as it is in G.S. 20-4.01.

(c) Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor. (1917, c. 140, ss. 18, 21; C.S., ss. 2599, 2619; 1971, c. 200; 1993, c. 539, s. 990; 1994, Ex. Sess., c. 24, s. 14(c); 2001-441, s. 3.)

#### **§ 136-92. Obstructing highway drains prohibited.**

It is unlawful to obstruct a drain along or leading from any public road in the State. A person who violates this section is responsible for an infraction. (1917, c. 253; C.S., s. 3791; 1993, c. 539, s. 991; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 163, s. 15.)

#### **§ 136-92.1. Exemption from temporary driveway permitting for forestry operations.**

Forestry operations and silviculture operations, including the harvesting of timber, and other related management activities that require temporary ingress from a property to State roads shall be exempt from the temporary driveway permit process of the Department for State roads, except for controlled access facilities, if the operator of the temporary driveway has attended an educational course on timbering access and obtained a safety certification. Driveway access points covered by this section shall be temporary and shall be removed upon the earlier of six months or the end of forestry or silviculture operations on the property. (2013-265, s. 17.)

#### **§ 136-93. Openings, structures, pipes, trees, and issuance of permits.**

(a) No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the Department of Transportation in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the Department of Transportation or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the Department of Transportation in cities and towns,

shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Department of Transportation or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Department of Transportation or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done. The Department of Transportation, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed sufficient by the Department of Transportation or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a State road or State highway, or placing any structure thereon, or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the provisions of this section, shall be guilty of a Class 1 misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law.

(b) Except as provided in G.S. 136-133.1(g), no vegetation, including any tree, shrub, or underbrush, in or on any right-of-way of a State road or State highway shall be planted, cut, trimmed, pruned, or removed without a written selective vegetation removal permit issued pursuant to G.S. 136-133.2 and in accordance with the rules of the Department. Requests for a permit for selective vegetation cutting, thinning, pruning, or removal shall be made by the owner of an outdoor advertising sign or the owner of a business facility to the appropriate person in the Division of Highways office on a form prescribed by the Department. For purposes of this section, G.S. 136-133.1, 136-133.2, and 136-133.4, the phrase "outdoor advertising" shall mean the outdoor advertising expressly permitted under G.S. 136-129(4) or G.S. 136-129(5). These provisions shall not be used to provide visibility to on-premises signs.

(c) For outdoor advertising, vegetation cut or removal limits shall be restricted to a maximum selective vegetation cut or removal zone for each sign face pursuant to the provisions of G.S. 136-133.1.

(d) If the application for vegetation cutting, thinning, pruning, or removal is for a site located within the corporate limits of a municipality, the municipality shall be given 30 days to review and provide comments on the application if the municipality has previously advised the Department in writing of the desire to review such applications and the name of the local official to whom notice of such application should be directed. (1921, c. 2, s. 13; 1923, c. 160, s. 2; C.S., s. 3846(u); 1933, c. 172, s. 17; 1943, c. 410; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1993, c. 539, s. 992; 1994, Ex. Sess., c. 24, s. 14(c); 2011-397, s. 1; 2014-115, s. 11.)

### **§ 136-93.01. Electronic submission of permits authorized.**

Except as otherwise prohibited under federal law, an application submitted for a permit issued by the Department of Transportation or its agents under this Chapter may be submitted electronically in a manner approved by the Department. If submitted electronically, a paper copy of the application shall not be required. (2017-10, s. 2.12(b).)

**§ 136-93.02. Uniform Process for Issuing Permits; Report.**

For each type of permit issued by the Highway Divisions under this Chapter, the Department of Transportation shall make uniform all processes and procedures followed by the Highway Divisions when issuing that type of permit no later than June 30, 2018. (2017-10, s. 2.12(a).)

**§ 136-93.1. Express permit review program.**

(a) Program Created. – The Department shall develop a fee-supported express permit review program in each highway division. The program is voluntary for permit applicants and applies to permits, approvals, or certifications that allow for a connection to the State highway system through the use of a driveway, street, signal, drainage, or any other encroachment.

(b) Implementation. – An individual highway division may opt out of the express permit review program created under this section if the highway division routinely reviews and issues special commercial permits within an average of 45 days. Any express permit review program created under this section shall be supported by the fees established pursuant to subsection (e) of this section.

(c) Procedure. – In reviewing a permit application under the express permit review program, the Department shall undergo the following steps:

- (1) The Department shall, within three business days of receipt, determine whether an express permit review application is complete. If the Department determines the express permit review application is not complete, the Department shall return the express permit review application and all fees to the permit applicant to allow for a complete express permit review application to be resubmitted to the Department.
- (2) If the Department determines the express permit review application is complete, the Department shall, within 45 days, issue or deny the permit based upon its review of the application. Failure of the Department to issue or deny the permit within 45 days is a denial of the express permit review application.

(d) Staffing. – In order to implement the express permit review program, the Department may utilize either of the following or a combination thereof:

- (1) Existing Department staff and resources.
- (2) Contracted engineering firms supporting each highway division to provide express permit reviews, comments, and recommendations for issuing express permits. If the Department utilizes contracted engineering firms to provide work under this section, any fees received by the Department pursuant to subsection (e) of this section shall be credited

towards the cost of the Department utilizing these contracted engineering firms. Any additional costs associated with engaging the contracted engineering firm shall be agreed to by the permit applicant prior to incurring the costs and shall be paid by the permit applicant.

(e) Fees. – The Department may determine the fees for an express application review under the express review program conducted by highway division staff. Unless a contracted engineering firm is utilized, the maximum permit application fee to be charged under this section for an express review of a project application requiring all of the permits listed under subsection (a) of this section shall not exceed four thousand dollars (\$4,000). Notwithstanding Chapter 150B of the General Statutes, the Department shall establish the procedure by which the amount of the fees under this subsection are established and applied for an express review program permitted by this section. The fee schedule established by the Department shall be applicable to all divisions participating in an express permit review program.

(f) Use of Fees. – All fees collected under this section shall be used to fund the cost of administering and implementing express permit review programs created under this section. These costs include the salaries of the program's staff and costs of contracted engineering firms.

(g) Repealed by Session Laws 2011-145, s. 28.35(a), effective July 1, 2011. (2008-176, s. 1; 2011-145, s. 28.35(a).)

#### **§ 136-93.1A. Time frame for reviewing and making a decision on traffic impact analyses.**

(a) Required Time Frames. – The following time frames apply to the Department's process for reviewing and making a decision on a traffic impact analysis:

- (1) The Department shall communicate the scope of the traffic impact analysis to the applicant no later than 10 business days from the day the Department receives the scope proposed by the applicant.
- (2) The Department shall review and make a decision as to the completeness of the traffic impact analysis no later than 20 business days from the day the Department receives the traffic impact analysis. Failure of the Department to meet the time frame set forth in this subdivision shall result in the traffic impact analysis being deemed complete.
- (3) The Department shall review and make a decision as to the approval or rejection of a traffic impact analysis no later than 20 business days from the day the traffic impact analysis is determined or deemed to be complete in accordance with subdivision (2) of this subsection or subsection (e) of this section. Failure of the Department to meet the time frame set forth in this subdivision shall result in the traffic impact analysis being deemed approved.

(b) Calculation. – The following rules apply when calculating the time frames set forth in subsection (a) of this section:

- (1) The period of time in which a local government or local transportation planning organization reviews and provides feedback shall be included.
- (2) The period of time in which the Department awaits a response from an applicant shall not be included.

(c) **Basis for Rejection.** – The Department shall not reject a traffic impact analysis on the basis that the applicant has failed to include information in a traffic impact analysis that is outside the scope established under subdivision (1) of subsection (a) of this section for that traffic impact analysis. When the Department rejects a traffic impact analysis, the Department shall provide the applicant written notice specifically setting forth the reason for rejection.

(d) **Effect of Rejection.** – The time frames set forth in subsection (a) of this section shall reset upon rejection of a traffic impact analysis. The Department may authorize an applicant to reuse the scope approved for a rejected traffic impact analysis if the applicant is submitting a revised traffic impact analysis. The Department shall notify the applicant as to whether the original scope may be used no later than five business days from the day the Department receives notice from the applicant that the applicant plans to submit a revised traffic impact analysis.

(e) **Appeal.** – An applicant may appeal a rejection of a traffic impact analysis by providing written notice of appeal to the Chief Engineer no later than five business days from the day the applicant receives the written notice required under subsection (c) of this section. No later than five business days from the day the Chief Engineer receives the written notice of appeal, the Chief Engineer shall either affirm or overturn the rejection being appealed. If the rejection being appealed is overturned, the traffic impact analysis that was the subject of the appeal shall be deemed (i) complete if the basis of the rejection being appealed was lack of completeness or (ii) approved if the basis of the rejection being appealed was for any reason other than lack of completeness. The Chief Engineer shall provide the appealing party with written notice of the Chief Engineer's decision, specifically setting forth the reason if the rejection being appealed is affirmed. A decision by the Chief Engineer shall be final and not subject to further appeal.

(f) **Criteria.** – The Department shall develop and use criteria for determining (i) the scope of a traffic impact analysis, (ii) the completeness of a traffic impact analysis, and (iii) whether to approve or reject a traffic impact analysis. The Department shall post the criteria on its Web site. Prior to amending the criteria, the Department shall consult with a working group that consists of engineers, local government representatives, local transportation planning organization representatives, and other interested stakeholders identified by the Department. The Department shall provide at least 90 days' notice prior to the effective date of any amendments to the criteria. The notice required under this subsection may be satisfied by publishing the proposed amendments on the Department's Web site.

(g) **Report.** – Beginning October 1, and annually thereafter, the Department shall provide to the chairs of the Joint Legislative Transportation Oversight Committee a report on the number of times the Department failed during the year preceding the report to meet

the time frame set in subdivision (1) of subsection (a) of this section, including reasoning for each failure. (2017-57, s. 34.39(a).)

**§ 136-93.2. Monetary value of trees.**

The monetary value for existing trees removed and eligible for reimbursement to the Department as provided in G.S. 136-93 or G.S. 136-133.1 from State rights-of-way shall be determined on an annual basis by the Department. In determining the value of existing trees removed, the average cost per caliper inch shall be based on the lower value of either the average wholesale commercial nursery prices for hardwood and conifer plants, times a 2.5 multiplier for installation and warranty or the average cost per caliper inch for tree planting contracts let by the Department in the previous calendar year. The values shall be determined and published by the Department no later than December 15 of each year. The values established pursuant to this section shall be used in calculating the monetary value of trees removed from State rights-of-way beginning January 1 of each year. If the Department fails to publish changes in values by December 15, then the values existing on December 15 shall be applicable to existing trees removed and eligible for reimbursement for the following year. (2011-397, s. 2.)

**§ 136-93.3. Selective pruning within highway rights-of-way to enable view of agritourism activities.**

The Department of Transportation shall adopt rules to authorize selective pruning within highway rights-of-way for vegetation that obstructs motorists' views of properties on which agritourism activities, as that term is defined in G.S. 99E-30, occur. The Department of Transportation is exempt from the provisions of G.S. 150B that require the preparation of fiscal notes for any rule proposed pursuant to this section. (2013-413, s. 45.)

**§ 136-94. Gates projecting over rights-of-way forbidden.**

It shall be unlawful for any person, firm or corporation to erect, maintain or operate upon his own land, or the land of another, any farm gate or other gate which, when opened, will project over the right-of-way of any State highway.

Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor. (1927, c. 130; 1993, c. 539, s. 993; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 136-95. Water must be diverted from public road by ditch or drain.**

When any ditch or drain is cut in such a way as to turn water into any public road, the person cutting the ditch or drain shall be compelled to cut another ditch or drain as may be necessary to take the water from said road. (Code, s. 2036; Rev., s. 2697; C.S., s. 3790.)

**§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.**

Every strip, piece, or parcel of land which shall have been at any time dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever, by a deed, grant, map,

plat, or other means, which shall not have been actually opened and used by the public within 15 years from and after the dedication thereof, shall be thereby conclusively presumed to have been abandoned by the public for the purposes for which same shall have been dedicated; and no person shall have any right, or cause of action thereafter, to enforce any public or private easement therein, except where such dedication was made less than 20 years prior to April 28, 1953, such right may be asserted within one year from and after April 28, 1953; provided, that no abandonment of any such public or private right or easement shall be presumed until the dedicator or some one or more of those claiming under him shall file and cause to be recorded in the register's office of the county where such land lies a declaration withdrawing such strip, piece or parcel of land from the public or private use to which it shall have theretofore been dedicated in the manner aforesaid; provided further, that where the fee simple title is vested in tenants in common or joint tenants of any land embraced within the boundaries of any such road, highway, street, avenue or other land dedicated for public purpose whatsoever, as described in this section, any one or more of such tenants, on his own or their behalf and on the behalf of the others of such tenants, may execute and cause to be registered in the office of the register of deeds of the county where such land is situated the declaration of withdrawal provided for in this section, and, under Chapter 46 of the General Statutes of North Carolina, entitled "Partition," and Chapter 1, Article 29A of the General Statutes of North Carolina, known as the "Judicial Sales Act," and on petition of any one or more of such tenants such land thereafter may be partitioned by sale only as between or among such tenants, and irrespective of who may be in actual possession of such land, provided further, that in such partition proceedings any such tenants in common or joint tenants may object to such withdrawal certificate and the court shall thereupon order the same cancelled of record; that where any corporation has dedicated any strip, piece or parcel of land in the manner herein set out, and said dedicating corporation is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title or interest in said strip, piece, or parcel of land, regardless of the provisions of conveyances from said corporation, or those holding under said corporation, retaining title and interest in said strip, piece, or parcel of land so dedicated; the right, title and interest in said strip, piece, or parcel of land shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent thereto, subject to the provisions set out herein before in this section.

The provisions of this section shall have no application in any case where the continued use of any strip of land dedicated for street or highway purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway. This section shall apply to dedications made after as well as before April 28, 1953.

The provisions of this section shall not apply when the public dedication is part of a future street shown on the street plan adopted pursuant to G.S. 136-66.2. Upon request, a city shall adopt a resolution indicating that the dedication described in the proposed declaration of withdrawal is or is not part of the street plan adopted under G.S. 136-66.2. This resolution shall be attached to the declaration of withdrawal and shall be registered in the office of the register of deeds of the county where the land is situated. (1921, c. 174; C.S., ss. 3846(rr), 3846(ss), 3846(tt); 1939, c. 406; 1953, c. 1091; 1957, c. 517; 1987, c. 428.)

### **§ 136-96.1. Special proceeding to declare a right-of-way dedicated to public use.**

(a) A special proceeding under Article 3, Chapter 1 of the General Statutes may be brought to declare a right-of-way dedicated to public use if:

- (1) The landowners of tracts constituting two-thirds of the road frontage of the land abutting the right-of-way in question join in the action;
- (2) The right-of-way is depicted on an unrecorded map, plat, or survey;
- (3) The right-of-way has been actually open and used by the public; and
- (4) Recorded deeds for at least three separate parcels abutting the right-of-way recite the existence of the right-of-way as a named street or road.

(b) In a special proceeding brought pursuant to this section, the clerk of court shall issue an order declaring the right-of-way to be dedicated to public use upon finding that the provisions of subsection (a) of this section have been proven.

(c) Any right-of-way found to be dedicated to public use pursuant to this section that is proposed for addition to the State highway system shall meet the requirements of G.S. 136-102.6.

(d) This section shall not apply to any right-of-way established by adverse possession or by cartway proceeding. (2001-501, s. 1.)

### **§ 136-96.2. Withdrawal of public use dedication by property owners associations.**

(a) **Qualification for Withdrawal of Dedication.** – A property owners association that owns subdivision streets or segments of streets may file in the office of the register of deeds, in the county where the streets are located, a declaration withdrawing any purported dedication to public use or withdrawing an offer of dedication to public use of such streets and declaring such streets to be private when all of the following conditions are met:

- (1) The subdivision within which the streets exist is located entirely outside the corporate limits of any municipality and bounded on the east by the Atlantic Ocean.
- (2) The subdivision was created by a plat recorded at least 30 years prior to the recording of the declaration of withdrawal.
- (3) The recorded plat of the subdivision bears a certificate signed by a county representative purporting to accept on behalf of the county the dedication of the streets shown on the plat.
- (4) At least two-thirds of the total length of all the streets shown on the plat have been paved, opened, and used for vehicular traffic for a period of at least 25 years prior to the recording of the declaration of withdrawal.
- (5) The subdivision streets have only one means of ingress and egress intersecting with a State highway.
- (6) The streets have never been maintained by the county, and the county claims no interest in the streets.
- (7) The Department of Transportation has never maintained the streets or accepted them for maintenance and claims no ownership interest in the streets.
- (8) The developer of the subdivision or the successor to the developer has deeded the streets to an incorporated property owners association and, therefore, such property owners association is the record owner of the streets.
- (9) The streets within the subdivision are being maintained and insured by the property owners association that represents all property owners.



- (10) The declaration of withdrawal has been approved by a two-thirds vote of all members of the property owners association present in person or by proxy at a special meeting of all such members duly called for that purpose.

(b) Approval by Board of County Commissioners; Signature of Clerk. – A declaration described under subsection (a) of this section may not be recorded unless it bears the signature of the clerk to the board of commissioners of the county where the streets covered in the declaration are located attesting to the adoption by the board of commissioners of a resolution approving such declaration. The board of commissioners may adopt such a resolution only upon a finding that each of the circumstances listed in subsection (a) of this section exists. In approving such a resolution, the board of commissioners may provide that:

- (1) The withdrawal of dedication shall not apply to (i) streets or segments of streets where withdrawal of dedication would terminate all reasonable legal means of access to any property or (ii) streets or segments of streets that are necessary to connect a public street located outside the subject subdivision with another public street located outside the subject subdivision.
- (2) No gate or other obstruction may be placed across any street or segments of streets unless such gate or obstruction is approved by the board of commissioners upon a finding by the board that other methods of preventing unauthorized parking or preserving public safety on such streets or segments of streets have proved inadequate.
- (3) The clerk to the board of commissioners shall sign the declaration of withdrawal only upon completion of the improvements to the covered streets in accordance with a plan for such improvements submitted by the property owners association that complies with any published street standards required by the county on the date that the subdivision plat was recorded as certified by the county engineer.

(c) Effect of Withdrawal of Dedication. – The recording of a declaration authorized by and in accordance with this section shall declare and make the streets described in the declaration the private property of the property owners association that owns such streets, and any offer of dedication of such streets that may have been created by the recording of the plat creating the subdivision shall be conclusively presumed to be withdrawn. However, the right, title, or interest vested in the property owners association remains subject to (i) public pedestrian access on, over, and upon the road or easement as existed immediately before its closing and (ii) any public utility use or facility located on, over, or under the road easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved, and the utility accepts, the reasonable cost of removing and relocating the facility. (2011-289, s. 1.)

**§ 136-97. Responsibility of counties for upkeep, etc., terminated.**

(a) The board of county commissioners or other road-governing bodies of the various counties in the State are hereby relieved of all responsibility or liability for the upkeep or maintenance of any of the roads or bridges thereon constituting the State highway system, after the same shall have been taken over, and the control thereof assumed by the Department of Transportation.

(b) The Department of Transportation, as part of maintaining the highways, bridges, and watercourses of this State, may haul all debris removed from on, under, or around a bridge to an appropriate disposal site for solid waste, where the debris shall be disposed of in accordance with law. (1921, c. 2, s. 50; C.S., s. 3846(dd); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, ss. 5, 20; 1977, c. 464, s. 7.1; 1989, c. 752, s. 102; 1989 (Reg. Sess., 1990), c. 1066, s. 139; 1991, c. 689, s. 209.)

**§ 136-98. Counties authorized to participate in costs of road construction and maintenance, participation is voluntary.**

(a) Repealed by Session Laws 2007-428, s. 4, effective August 23, 2007.

(b) Nothing in this Article prohibits counties from establishing service districts for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes.

(c) A county is authorized to participate in the cost of rights-of-way, construction, reconstruction, improvement, or maintenance of a road on the State highway system under agreement with the Department of Transportation. County participation in improvements to the State highway system is voluntary. The Department shall not transfer any of its responsibilities to counties without specific statutory authority. (1931, c. 145, s. 35; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1995, c. 434, s. 2; 2007-428, s. 4; 2008-180, s. 7.)

**§§ 136-99 through 136-101. Repealed by Session Laws 1971, c. 1106.**

**§ 136-102. Billboard obstructing view at entrance to school, church or public institution on public highway.**

(a) It shall be unlawful for any person, firm, or corporation to construct or maintain outside the limits of any city or town in this State any billboard larger than six square feet at or nearer than 200 feet to the point where any walk or drive from any school, church, or public institution located along any highway enters such highway except under the following conditions:

- (1) Such billboard is attached to the side of a building or buildings which are or may be erected within 200 feet of any such walk or drive and the attachment thereto causes no additional obstruction of view.
- (2) A building or other structure is located so as to obstruct the view between such walk or drive and such billboard.
- (3) Such billboard is located on the opposite side of the highway from the entrance to said walk or drive.

(b) Any person, firm, or corporation convicted of violating the provisions of this section shall be guilty of a Class 3 misdemeanor and punished only by a fine of ten dollars (\$10.00), and each day that such violation continues shall be considered a separate offense. (1947, c. 304, ss. 1, 2; 1993, c. 539, s. 994; 1994, Ex. Sess., c. 24, s. 14 (c).)

**§ 136-102.1. Blue Star Memorial and American Ex-Prisoners of War Highway.**

All of the United States Highway #70, wherever located in North Carolina shall be known and designated as the "Blue Star Memorial and American Ex-Prisoners of War Highway." The designation shall pay tribute to the many North Carolinians killed during World War II and to all North Carolina's ex-prisoners of war. (1963, c. 140; 2001-196, s. 1.)

**§ 136-102.2. Authorization required for test drilling or boring upon right-of-way; filing record of results with Department of Transportation.**

No person, firm or corporation shall make any test drilling or boring upon the right-of-way of any transportation system, under the jurisdiction of the Department of Transportation, until written authorization has been obtained from the owner or the person in charge of the land on which the highway easement is located. A complete record showing the results of the test drilling or boring shall be filed forthwith with the chairman [Secretary] of the Department of Transportation and shall be a public record. This section shall not apply to the Department of Transportation making test drilling or boring for highway purposes only. (1967, c. 923, s. 1; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 2009-266, s. 25.)

**§ 136-102.3. Filing record of results of test drilling or boring with Secretary of Administration and Secretary of Environmental Quality.**

Any person, firm or corporation making any test drilling or boring upon any public land, owned or controlled by the State of North Carolina[,] shall, forthwith after completion, file a complete record of the results of the test drilling or boring with the Secretary of Administration and with the Secretary of Environmental Quality, of each test hole bored or drilled. Such records filed shall become a matter of public record. Provided, that after exploratory drilling and boring has been completed, and a lease or contract has been executed for operation, production or development of the area, the results of test drillings or borings made incidental to the operation, production or development of the area under lease or contract shall not be subject to the provisions of G.S. 136-102.2 to 136-102.4 unless otherwise provided in such lease or contract. (1967, c. 923, s. 2; 1973, c. 1262, s. 86; 1975, c. 879, s. 46; 1977, c. 771, s. 4; 1989, c. 727, s. 218(90); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

**§ 136-102.4. Penalty for violation of §§ 136-102.2 and 136-102.3.**

Violation of G.S. 136-102.2 and 136-102.3 shall be a Class 1 misdemeanor. (1967, c. 923, s. 3; 1993, c. 539, s. 995; 1994, Ex. Sess., c. 24, s. 14 (c).)

**§ 136-102.5. Signs on fishing bridges.**

When requested to do so by any county or municipality that has enacted an ordinance under G.S. 153-9(66) and 160-200(47) regulating or prohibiting fishing on any bridge of the North Carolina State highway system, the Department of Transportation shall erect signs on such bridges indicating the prohibition or regulation of the ordinance enacted under G.S. 153-9(66) and 160-200(47). (1971, c. 690, s. 5; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1.)

**§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.**

(a) The owner of a tract or parcel of land which is subdivided from and after October 1, 1975, into two or more lots, building sites, or other divisions for sale or building development for residential purposes, where such subdivision includes a new street or the changing of an existing street, shall record a map or plat of the subdivision with the register of deeds of the county in which the land is located. The map or plat shall be recorded prior to any conveyance of a portion of said land, by reference to said map or plat.

(b) The right-of-way of any new street or change in an existing street shall be delineated upon the map or plat with particularity and such streets shall be designated to be either public or private. Any street designated on the plat or map as public shall be conclusively presumed to be an offer of dedication to the public of such street.

(c) The right-of-way and design of streets designated as public shall be in accordance with the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system. If a municipal or county subdivision control ordinance is in effect in the area proposed for subdivision, the map or plat required by this section shall not be recorded by the register of deeds until after it has received final plat approval by the municipality or county, and until after it has received a certificate of approval by the Division of Highways as herein provided as to those streets regulated in subsection (g). The certificate of approval may be issued by a district engineer of the Division of Highways of the Department of Transportation.

(d) The right-of-way and construction plans for such public streets in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the Review Officer, a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The Review Officer shall not certify a map or plat subject to this section unless the new streets or changes in existing streets are designated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of the streets on the subdivision plat or map. Final acceptance by the Division of Highways of the public streets and placing them on the State highway system for maintenance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation.

(e) No person or firm shall place or erect any utility in, over, or upon the existing or proposed right-of-way of any street in a subdivision to which this section applies, except in accordance with the Division of Highway's policies and procedures for accommodating utilities on highway rights-of-way, until the Division of Highways has given written approval of the location of such utilities. Written approval may be in the form of exchange of correspondence until such times as it is requested to add the street or streets to the State system, at which time an encroachment agreement furnished by the Division of Highways must be executed between the owner of the utility and the Division of Highways. The right of any utility placed or located on a proposed or existing subdivision public street right-of-way shall be subordinate to the street right-of-way, and the utility shall be subject to regulation by the Department of Transportation. Utilities are defined as electric power, telephone, television, telegraph, water, sewage, gas, oil, petroleum products, steam, chemicals, drainage, irrigation, and similar lines. Any utility installed in a subdivision street not in accordance with the Division of Highways accommodation policy,

and without prior approval by the Division of Highways, shall be removed or relocated at no expense to the Division of Highways.

(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. If the street is designated by the developer and seller as a public street, the developer and seller shall certify that the right-of-way and design of the street has been approved by the Division of Highways, and that the street has been or will be constructed by the developer and seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system. If the street is designated by the developer and seller as a private street, the developer and seller shall include in the disclosure statement an explanation of the consequences and responsibility as to maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of such street or streets shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original which shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

(g) The provisions of this section shall apply to all subdivisions located outside municipal corporate limits. As to subdivisions inside municipalities, this section shall apply to all proposed streets or changes in existing streets on the State highway system as shown on the comprehensive plan for the future development of the street system made pursuant to G.S. 136-66.2, and in effect at the date of approval of the map or plat.

(h) The provisions of this section shall not apply to any subdivision that consists only of lots located on Lakes Hickory, Norman, Mountain Island and Wylie which are lakes formed by the Catawba River which lots are leased upon October 1, 1975. No roads in any such subdivision shall be added to the State maintained road system without first having been brought up to standards established by the Board of Transportation for inclusion of roads in the system, without expense to the State. Prior to entering any agreement or any conveyance with any prospective buyer of a lot in any such subdivision, the seller shall prepare and sign, and the buyer shall receive and sign an acknowledgment of receipt of a statement fully and completely disclosing the status of and the responsibility for construction and maintenance of the road upon which such lot is located.

(i) The purpose of this section is to insure that new subdivision streets described herein to be dedicated to the public will comply with the State standards for placing subdivision streets on the State highway system for maintenance, or that full and accurate disclosure of the responsibility for construction and maintenance of private streets be made. This section shall be construed and applied in a manner which shall not inhibit the ability of public utilities to satisfy service requirements of subdivisions to which this section applies.

(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a transportation corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article.

(k) A willful violation of any of the provisions of this section shall be a Class 1 misdemeanor. (1975, c. 488, s. 1; 1977, c. 464, ss. 7.1, 8; 1987, c. 747, s. 21; 1993, c. 539, s. 996; 1994, Ex. Sess., c. 24, s. 14(c); 1997-309, s. 4; 1998-184, s. 3.)

**§ 136-102.7. Hurricane evacuation standard.**

Evacuation Standard. – The hurricane evacuation standard to be used for any bridge or highway construction project pursuant to this Chapter shall be no more than 18 hours, as recommended by the State Emergency Management officials. (2005-275, s. 5.)

**§ 136-102.8. Subdivision streets; traffic calming devices.**

The Department shall establish policies and procedures for the installation or utilization of traffic tables or traffic calming devices erected on State-maintained subdivision streets adopted by the Department, pursuant to G.S. 136-102.6, if all of the following requirements are met:

- (1) A traffic engineering study has been approved by the Department detailing types and locations of traffic calming devices.
- (2) Installation and utilization of traffic tables or traffic calming devices is within one of the following areas:
  - a. A subdivision with a homeowners association.
  - b. A neighborhood in which the property owners have established a contractual agreement outlining responsibility for traffic calming devices installed in the neighborhood.
- (3) The traffic tables or traffic calming devices are paid for and maintained by the subdivision homeowners association, or its successor, or pursuant to a neighborhood agreement.
- (4) The homeowners association has the written support, for the installation of each traffic table or traffic calming device approved by the Department pursuant to this section, of at least sixty percent (60%) of the member property owners, or the neighborhood agreement is signed by at least sixty percent (60%) of the neighborhood property owners.
- (5) The homeowners association, or neighborhood pursuant to its agreement, posts a performance bond with the Department sufficient to fund maintenance or removal of the traffic tables or calming devices, if the homeowners association, or neighborhood pursuant to its agreement, fails to maintain them, or is dissolved. The bond shall remain in place for a period of three years from the date of installation. (2009-310, s. 1; 2015-217, s. 2.)

**§ 136-102.9. Use of aircraft managed by the Department of Transportation.**

Of the aircraft managed by the Department of Transportation, the use of aircraft for economic development purposes shall take precedence over all other uses except in cases of emergency or disaster response. The Department of Transportation shall annually review the rates charged for the use of aircraft and shall adjust the rates, as necessary, to account for upgraded aircraft and inflationary increases in operating costs, including jet fuel prices.

If an aircraft is used to attend athletic events or for any other purpose related to collegiate athletics, the rate charged shall be equal to the direct cost of operating the aircraft as established by the aircraft's manufacturer, adjusted for inflation. (2010-31, s. 14.6(c).)